

ASSEMBLY BILL

No. 1114

Introduced by Assembly Member Bonnie Lowenthal

February 18, 2011

An act to amend Section 2600 of, and to add Section 2602 to, the Penal Code, relating to inmates.

LEGISLATIVE COUNSEL'S DIGEST

AB 1114, as introduced, Bonnie Lowenthal. Inmates: involuntary administration of psychotropic medications.

Existing law provides that a person sentenced to imprisonment in a state prison may be deprived of rights only as is reasonably related to legitimate penological interests. Existing law states that nothing in this provision shall be construed to permit the involuntary administration of psychotropic medication unless the process specified in *Keyhea v. Rushen* (1986) 178 Cal.App.3d 526 has been followed. Existing law further requires that this process be conducted by an administrative law judge.

This bill would delete the provision regarding the medication process specified in *Keyhea v. Rushen*. The bill would instead provide that no inmate shall be administered psychotropic medication without the inmate's informed consent, unless a noticed hearing is conducted in which an administrative law judge determines by clear and convincing evidence that the inmate suffers from a mental illness or disorder, that the inmate is or is likely to become gravely disabled or a danger to self or others, and that the medication is in the inmate's best medical interest. The bill would provide that this determination shall be valid for one year from the date the determination is made. This bill would require

that the inmate be provided with written notice, as specified, and appointed counsel at least 21 days prior to the hearing.

The bill would provide that it is not intended to prohibit a physician from taking appropriate action in an emergency, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2600 of the Penal Code is amended to
2 read:

3 2600. A person sentenced to imprisonment in a state prison
4 may during that period of confinement be deprived of such rights,
5 and only such rights, as is reasonably related to legitimate
6 penological interests.

7 ~~Nothing in this section shall be construed to permit the~~
8 ~~involuntary administration of psychotropic medication unless the~~
9 ~~process specified in the permanent injunction, dated October 31,~~
10 ~~1986, in the matter of Keyhea v. Rushen, 178 Cal. App. 3d 526,~~
11 ~~has been followed. The judicial hearing for the authorization for~~
12 ~~the involuntary administration of psychotropic medication provided~~
13 ~~for in Part III of the injunction shall be conducted by an~~
14 ~~administrative law judge. The hearing may, at the direction of the~~
15 ~~director, be conducted at the facility where the inmate is located.~~

16 Nothing in this section shall be construed to overturn the decision
17 in Thor v. Superior Court, 5 Cal. 4th 725.

18 SEC. 2. Section 2602 is added to the Penal Code, to read:

19 2602. (a) Except as provided in subdivision (b), no person
20 described in Section 2600 shall be administered any psychotropic
21 medication without his or her prior informed consent.

22 (b) If a psychiatrist determines that an inmate should be treated
23 with psychotropic medication, but the inmate does not consent,
24 the inmate may be involuntarily treated with the medication only
25 if all of the following conditions have been met:

26 (1) A psychiatrist has determined that the inmate suffers from
27 a serious mental disorder.

28 (2) A psychiatrist has determined that, as a result of that mental
29 disorder, the inmate currently is, or is likely to become, gravely
30 disabled or a danger to self or others.

1 (3) A psychiatrist has prescribed one or more psychotropic
2 medications for the treatment of the inmate's mental disorder.

3 (4) The inmate is provided a hearing before an administrative
4 law judge.

5 (5) The inmate is provided counsel at least 21 days prior to the
6 hearing.

7 (6) The inmate and counsel are provided with written notice of
8 the hearing at least 21 days prior to the hearing. The written notice
9 shall do all of the following:

10 (A) Set forth the diagnosis, the factual basis for the diagnosis,
11 the basis upon which psychotropic medication is recommended,
12 the expected benefits of the medication, any potential side effects
13 and risks to the inmate from the medication, and any alternatives
14 to treatment with the medication.

15 (B) Advise the inmate of the right to be present at the hearing,
16 the right to present evidence, and the right to cross-examine
17 witnesses.

18 (7) An administrative law judge determines by clear and
19 convincing evidence at the conclusion of the hearing that the inmate
20 suffers from a mental illness or disorder, that the inmate currently
21 is, or is likely to become, gravely disabled or a danger to self or
22 others if not medicated, and that the medication is in the inmate's
23 best medical interest.

24 (c) The determination that an inmate may receive involuntary
25 medication shall be valid for one year from the date of the
26 determination, regardless of whether the inmate subsequently gives
27 his or her informed consent.

28 (d) If a determination has been made to involuntarily medicate
29 an inmate pursuant to subdivision (b), the medication shall be
30 discontinued one year after the date of that determination, unless
31 the inmate gives his or her informed consent to the administration
32 of the medication, or unless a new determination is made pursuant
33 to the procedures set forth in subdivision (b).

34 (e) Nothing in this section is intended to prohibit a physician
35 from taking appropriate action in an emergency. For purposes of
36 this section, an emergency exists when there is a sudden and
37 marked change in the inmate's mental condition so that action is
38 immediately necessary for the preservation of life or the prevention
39 of serious bodily harm to the inmate or others and it is impractical
40 to first obtain informed consent. If psychotropic medication is

- 1 administered during an emergency, the medication shall only be
- 2 that which is required to treat the emergency condition.

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